



Retail Trading Amendment Bill 2015 (Proof)

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RETAIL TRADING AMENDMENT BILL 2015

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [11.11a.m.]: I move:

That this bill be now read a second time.

The Government went to the electorate in March with a public commitment to modernise retail trading laws to provide more certainty and choice for consumers, retailers and employees. It is not unusual for the New South Wales retail economy to turn over around \$8 billion per month and it provides employment for 10 per cent of the New South Wales workforce, that is, more than 375,000 jobs. Our current retail laws are outdated and increasingly out of step with contemporary patterns of work, leisure and shopping.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! The Minister is giving a second reading speech and will be heard in silence.

The Hon. DUNCAN GAY: Restrictions have been relaxed over the decades; they have moved with the times. When the regulation of retail trading hours in New South Wales began over 100 years ago, it was all about making sure shop workers were able to go home every night to rest and to have a day off every week. Today, employee entitlements to time off work, including on public holidays, are the province of the Commonwealth's Fair Work laws and industrial awards. The State can only regulate business trading hours through the Retail Trading Act. The Act requires shops and banks to close on Good Friday, Easter Sunday, Anzac Day until 1.00 p.m., Christmas Day and Boxing Day. Banks also have to close on weekends and on all public holidays.

Since the last major reform of the New South Wales trading laws in 2008, disputed exemption determinations and amendments to the Retail Trading Act in subsequent years suggest that a consistent scheme that balances the needs of consumers, retailers and retail employees is yet to be achieved in this State. The current retail trading regime is complex, inconsistent, inefficient and administratively burdensome. Currently, retailers in the Sydney central business district, Bondi Junction, Moore Park and Broadway are exempt from the requirement to close their doors on Boxing Day, but retailers in suburban Sydney are not. On Boxing Day people can choose to shop or choose to work in a shop in the Sydney central business district or in the eastern suburbs but not in Parramatta, Campbelltown or Penrith.

Equally, shops in a number of holiday centres up and down the New South Wales coast are permitted to open for trade but not those in adjacent centres a short drive away. While stores in the Wollongong mall are closed on Boxing Day, 20 minutes away stores in Shellharbour are open. While the shops of Moama on the New South Wales side of the Murray are shut, five minutes over the bridge into Echuca, Victoria, the retail shops are permitted to open. This is stifling growth in the State and denying opportunities for consumers, retailers and staff. It means people from the western suburbs of Sydney have to converge on the central business district to do their shopping.

For small business owners and local communities, the reform means local dollars in local shops. The opportunity for local businesses to open their doors for such a major day of trading cannot be underestimated. Small businesses are the backbone of local communities and a major provider of local jobs across New South Wales. The existing laws discriminate against consumers, retailers and employees because of where they shop, where they choose to do business and where they live. People can shop online 24 hours a day, every day of the week, every week of the year. Yet a retail outlet in Western Sydney or some other part of the State is held back by not

being able to open its doors on Boxing Day.

It makes sense for consumers who want to shop on Boxing Day to do so at their local shopping centre rather than being funnelled into the Sydney central business district. It makes just as much sense for workers, particularly casual employees, to have the opportunity to earn more money as it does for them to choose to spend the day with family and friends. It should be their choice. The provisions of this bill that would allow shops such as supermarkets, department stores, small retail businesses and banks throughout New South Wales to open on Boxing Day will be conditional on staff freely electing to work without coercion or threats made by or on behalf of the retailer. Failure to comply with this condition means the retailer would be in breach of the law and therefore be subject to possible prosecution action and an \$11,000 fine.

Nothing in this bill changes the status of Boxing Day as a public holiday and, therefore, employees retain their rights under the Commonwealth Fair Work Act and relevant awards and agreements that apply to them. Boxing Day remains a restricted trading day. Shopkeepers cannot be compelled by their landlord to open. If they do not have staff members who freely elect to work or if they simply do not think it appropriate or even worthwhile to open on Boxing Day, any lease arrangement that compels them to do so is voided by the Retail Trading Act.

Following discussions with stakeholders, the Government has agreed to prioritise significant resources to boost business education activities ahead of Boxing Day and to boost compliance and investigation resources in regard to Boxing Day trading specifically. Should this bill pass, the Government is committed to ensuring that resources are available within the NSW Industrial Relations so that any complaint made in regard to an employee being forced to work or a shop being forced to open this Boxing Day is investigated. The NSW Industrial Relations will allocate five full-time resources to compliance activities around Boxing Day this year and it will be 100 per cent devoted to ensuring that any complaints are investigated. Additional resources will be identified over coming weeks so that they can be allocated if required, so that any complaints receive the attention they deserve.

Let me add that based on the current situation with Boxing Day trading we do not expect to be overwhelmed by complaints but the NSW Industrial Relations will be equipped to undertake the work required to ensure all complaints are looked at. The NSW Industrial Relations will significantly increase education activities in the lead-up to Boxing Day so that employers and employees know their rights and responsibilities. This will include webinars—online seminars—starting from mid-November, with businesses being invited to attend, which will set out clearly the new law.

Let me also make this clear, the Government will not remove restrictions on retail trading around other public holidays such as Christmas Day, Easter Sunday, Good Friday or Anzac Day morning. This is an ironclad guarantee. A series of reviews have consistently advocated the change we are proposing to retail trading laws. In 2007 the New South Wales Better Regulation Office conducted an examination of the regulation of trading hours and recommended that Boxing Day should be an unrestricted trading day. Reports prepared in 2011 and 2014 into the Australian retail industry by the Productivity Commission have called for the further liberalisation of trading hours around the country. So has Professor Ian Harper in his 2015 competition policy review.

I now turn to the substantive provisions of the bill. Items [1,] [3], [4], [6], [7], [12] and [13] of schedule 1 all relate to the simplified specification of the "freely elect to work" requirement which is a condition that applies to all exemptions in the bill. This consolidation is undertaken to reduce the complexity of the various exemption provisions of the Act. Item [2] provides for the removal of the Boxing Day trading exemption applying only to the Sydney trading precinct. That will become redundant with the introduction of a statewide conditional exemption for Boxing Day. This means that shops in the Sydney trading precinct will be subject to the same conditional exemption, such as their employees have freely elected to work, as all other shops opening on Boxing Day. This is not currently the case.

Item [5] provides for the proposed statewide Boxing Day conditional exemption to open for trade. It also provides for shops to be made ready for the immediate resumption of trade after a restricted day. Items [8] and [11] enable the conditional exemption for the August bank holiday and other public holiday trading by retail bank branches. The Government believes there are no compelling reasons for the retention of arrangements specifically for banks that do not apply to other businesses or industries, especially financial institutions that provide similar products and services. Good Friday, Easter Sunday, Anzac Day before 1.00 p.m., and Christmas Day will remain completely restricted for retail bank branches.

To ensure consistency as far as possible across the finance sector items [9] and [10] provide for a conditional exemption for financial institutions other than banks—credit unions and the like—to open for retail business on the August bank holiday. This is their only restricted day. To be absolutely clear, this and all other exemptions provided by the bill are subject to the condition that staff on the day freely elect to work without having been coerced, harassed, threatened or intimidated by or on behalf of the occupier of the business concerned.

In summary, this bill amends the Retail Trading Act 2008 to provide for greater choice and convenience for

consumers, increased competition between retailers, a levelling of the playing field between bricks and mortar retailers and online retailers, and less red tape and administrative costs for businesses while allowing workers to choose how they balance their family life with the opportunity to earn additional income. I commend the bill to the House.